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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1414th MEETING

Held at Headquarters, New York,
on Thursday, 6 April 1995, at 4.30 p.m.

Chairman: Mr. BHAGWATI
(Vice-Chairman)

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* The summary record of the first part (closed) of the meeting appears as document CCPR/C/SR.1414.

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In the absence of Mr. Aguilar, Mr. Bhagwati, Vice-Chairman, took the Chair.

The public part of the meeting was called to order at 4.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment on article 25 of the Covenant (continued) (CCPR/C/53/CRP.1)

Paragraph 4

1. Mrs. EVATT, speaking on behalf of the Working Group on Article 40 of the Covenant, said that paragraph 4, like the paragraphs before it, dealt with basic principles and sought to define the concepts "conduct of public affairs" and "citizens' participation in the conduct of public affairs directly or through freely chosen representatives". The whole section of the draft relating to article 25 (a) sought to express the ideal of democracy, namely, the accountability of the institutions of government to the people.

2. Mr. EL-SHAFEI proposed that the phrase "constitutional and other laws" at the end of the paragraph should be replaced by the phrase "the Constitution and laws".

3. Paragraph 4, as amended, was adopted.

Paragraph 5

4. Mr. ANDO said that the third sentence ought to refer to the content rather than the form of the Constitution. Also, the rationale behind the fourth sentence was not very clear to him. The penultimate sentence, while perhaps true, could be misleading, especially the term "more opportunities".

5. Mrs. MEDINA QUIROGA proposed deleting the penultimate sentence because it added little.

6. Mr. PRADO VALLEJO observed that paragraph 5 was full of unassailable but general statements that provided little guidance in human rights law. The purpose of general comments was to explicate the law in order to help State parties deal with concrete problems they might encounter. As the paragraph stood, it was more theoretical than practical.

7. Mrs. EVATT agreed that the phrase "the form of" could be deleted in the third sentence and that the penultimate sentence could be deleted entirely. The fourth sentence had been intended to indicate the importance of decision-making bodies at the local level, which offered an opportunity for a true participatory process in many countries.

8. She agreed with Mr. Prado Vallejo that paragraph 5 was very general. It purported to be only an outline description of what was meant by the conduct of public affairs. Public affairs did not involve, for instance, only parliaments,

but all governmental bodies. Paragraph 5 was intended to lead into paragraph 6, which made the central point that public affairs were conducted either directly or through representatives in a way that was accountable to the citizens.

9. Mr. POCAR wondered whether the reference to subparagraph (b) of article 25 in the second sentence should not in fact have been to subparagraph (a). Although he could accept the substance of the first sentence of paragraph 5, it was also true that citizens sometimes participated in public affairs not as freely chosen representatives. The language should be changed to indicate that they should be elected freely. The words "and administrative" should be inserted after "legislative" in the same sentence because participation in an administrative body was not covered by the reference to "legislative" bodies.

10. The second part of the fourth sentence, beginning with the words "and through bodies established", referred to indirect participation. As to the final sentence, instead of the phrase "no unreasonable distinction" the Committee should refer to "objective and reasonable criteria", which was the language used in its draft general comment on non-discrimination.

11. Mrs. EVATT pointed out that "distinctions" and "unreasonable restrictions" were the words used in article 25 of the Covenant.

12. The reference to subparagraph (b) was correct and alluded to the fact that it was expected that direct participation would be effected by election. The rights to vote and to be elected were covered by article 25 (b). Perhaps the concept of citizen participation reflected in the phrase "the freely chosen representatives of citizens" was adequately covered in paragraph 6 of the draft comment.

13. As to Mr. Pocar's suggestion to refer to administrative bodies in the first sentence, she said that it was necessary to distinguish between public office and public service; the latter was dealt with in article 25, subparagraph (c). While it might be argued that persons who had access to public service in accordance with subparagraph (c) and who reached high levels might be participating in the conduct of public affairs, they did so in public service and not in elective office. The phrase "bodies established to represent groups of citizens" referred to lobby groups, through which citizens transmitted their views to Governments, thereby participating in the conduct of public affairs. Perhaps the reference to such bodies could be placed elsewhere in the text.

14. Mr. POCAR said that he could accept using the language of article 25 of the Covenant.

15. The CHAIRMAN, speaking in his personal capacity, said that the point was that there should be no discrimination between citizens.

16. Mrs. EVATT said that the word "unreasonable" at the end of the last sentence could be deleted.

17. Mr. EL-SHAFEI said that the fourth sentence was too long and dealt with two separate issues. The first part of the sentence, through the words "particular community", should be retained.

18. Paragraphs 5 and 6 defined how citizens could participate directly and indirectly in the conduct of public affairs. The words "as the freely chosen representative of citizens" should therefore be retained in the first sentence of paragraph 5.

19. Mr. PRADO VALLEJO suggested deleting the first five sentences of paragraph 5 altogether and incorporating in paragraph 4 the idea that citizen participation should be assured without any discrimination or distinction and without any undue restriction.

20. Mrs. MEDINA QUIROGA said she believed that the points made in paragraph 5 were very important and should remain where they were. Even if the ideas stated were obvious, they were not always observed in practice.

21. Mr. LALLAH suggested that the second clause of the final sentence might be amended to read along the following lines: "no distinction should be made among citizens as regards their participation, unless such distinction is based on reasonable and objective criteria".

22. The CHAIRMAN, speaking in his personal capacity, endorsed that suggestion.

23. Mr. KLEIN said that the language of article 25 should be reflected in the last sentence of paragraph 5. In addition, there should be no unreasonable restrictions between citizens, whether their participation in public affairs was direct or indirect.

24. The CHAIRMAN, speaking in his personal capacity, suggested that the final sentence should include, in addition to the amendment proposed by Mr. Lallah, a reference to the fact that no unreasonable restriction should be imposed, as expressed in the introductory sentence to article 25 of the Covenant.

25. Mrs. EVATT agreed that the broader language of article 25 should be used. She wished to retain the points currently included in paragraph 5 and would redraft the paragraph to take into account the discussion at the current meeting.

26. The CHAIRMAN, speaking in his personal capacity, said that paragraphs 4, 5 and 6 were interconnected and that paragraph 5 should therefore be retained, subject to editorial changes.

27. Mr. LALLAH agreed with Mr. Klein that the final sentence of paragraph 5 applied to more than just direct participation in the conduct of public affairs. Perhaps the point could be made elsewhere in the text.

28. The CHAIRMAN, speaking in his personal capacity, observed that paragraph 3 covered the point.

29. Mrs. EVATT said that she would review the text to determine whether the final sentence of paragraph 5 was superfluous.

The public part of the meeting rose at 5.10 p.m.